

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

PB-7 Doe,

Plaintiff,

vs.

AMHERST CENTRAL SCHOOL DISTRICT,
AMHERST CENTRAL HIGH SCHOOL, and
JOHN KOCH a/k/a JACK KOCH,

Defendants.

SUMMONS

Index No.:

TO THE ABOVE NAMED DEFENDANTS:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer the Complaint, a copy of which is hereby served upon you, and to serve a copy of your Answer to the Complaint upon the undersigned attorneys listed below within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment by default will be taken against you for the relief demanded herein.

Dated: New York, New York
September 19, 2019

Yours, etc.



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STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

PB-7 Doe,

Plaintiff,

vs.

AMHERST CENTRAL SCHOOL DISTRICT,
AMHERST CENTRAL HIGH SCHOOL, and
JOHN KOCH a/k/a JACK KOCH,

Defendants.

COMPLAINT

Index No.:

Plaintiff PB-7 Doe, by and through her undersigned attorneys, as and for her Verified Complaint, alleges as follows:

NATURE OF THE ACTION

1. This action is brought pursuant to the Child Victims Act, codified at CPLR 214-g.
2. Plaintiff PB-7 Doe, a student at Defendant Amherst Central High School, was repeatedly sexually abused and assaulted by Defendant John Koch a/k/a Jack Koch ("Koch"), an employee of Defendants Amherst Central School District and Amherst Central High School.
3. Plaintiff was about 14 - 15 years old when the sexual abuse first began, in or about 1981.
4. Defendants Amherst Central School District and Amherst Central High School held Koch out as a guidance counselor for students, and Koch's abuse of Plaintiff occurred while he was acting in his assigned role of guidance counselor. In fact, Koch had neither the training, education nor expertise of a guidance counselor, and he was unqualified to serve in that role.

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5. Koch's sexual abuse of Plaintiff took place on the premises of Amherst Central High School and elsewhere. The sexual abuse, which was extreme, and took place over several years.

6. Not only did Defendants Amherst Central School District and Amherst Central High School place Plaintiff in harm's way by improperly holding Koch out as a guidance counselor and permitting him to have unfettered access to Plaintiff in that role, but they carelessly, negligently, and recklessly, failed to protect Plaintiff from sexual abuse by Koch, permitted the abuse to occur, failed to supervise Koch, failed to timely investigate Koch's misconduct, acted to protect their own self-interest to the detriment of innocent children, and are otherwise responsible for Koch's sexual assault of Plaintiff, and Plaintiff's consequential injuries and damages.

PARTIES

7. Plaintiff is an individual residing in Erie County, New York.

8. Plaintiff was born in 1966.

9. Defendant Amherst Central School District is, and at all relevant times was, a non-profit organization or entity, which includes but is not limited to civil corporations, decision-making entities, officials, and employees, authorized to conduct business and doing business at 55 Kings Highway, Amherst, New York 14226.

10. At all relevant times, Defendant Amherst Central School District oversaw, managed, controlled, directed and operated public schools, within the Amherst Central School District, including Defendant Amherst Central High School.

11. At all relevant times, Defendant Amherst Central High School was and still is a public school, organized pursuant to the laws of the State of New York and located at 4301 Main Street, Amherst, New York 14226.

12. At all relevant times, Defendant Amherst central High School was and still is under the direct authority and control of Defendant Amherst Central School District. .

13. At all relevant times, Defendant Amherst Central School District owned the premises where Defendant Amherst Central High School was located.

14. At all relevant times, Defendant Amherst Central School District oversaw, managed, controlled, directed and operated Defendant Amherst Central High School.

15. At all relevant times, Defendant Koch was an employee of Amherst Central School District and Amherst Central High School, assigned to the position of guidance counselor.

FACTUAL ALLEGATIONS

16. Plaintiff repeats and re-alleges all preceding paragraphs of this Complaint.

17. From approximately 1981 through 1983 Plaintiff attended Amherst Central High School.

18. At all relevant times, Defendant Koch was under the direct supervision, employ and control of the Defendants Amherst Central School District and Amherst Central High School.

19. At all relevant times, Koch's duties and responsibilities included providing guidance counseling to students at Amherst central High School.

20. At all relevant times Defendants Amherst Central School District and Amherst Central High School held Koch out as a qualified guidance counselor for students.

21. At all relevant times, Koch did not possess training, education or expertise as a guidance counselor, and was unqualified to provide counseling service of any kind to students.

22. Upon information and belief, Koch had been hired by Defendants Amherst Central School District and Amherst Central High School as a teacher's aide to assist in the main office with attendance and clerical matters.

23. Notwithstanding Koch's lack of qualifications or expertise, Defendants Amherst Central School District and Amherst Central High School authorized and allowed Koch to provide counseling to minor students, including Plaintiff, to be alone with them, and to have unfettered and unsupervised access to them on Defendants' property.

24. Beginning in or about 1981, when Plaintiff was in 9th grade, Defendant Koch, acting in the course and scope of his employment with Defendants Amherst Central School District and Amherst Central High School, undertook to counsel Plaintiff on academic, emotional, and/or social problems.

25. At all relevant times, Defendants Amherst Central School District and Amherst Central High School authorized and permitted Koch to conduct these counseling sessions on with Plaintiff on school premises, behind closed doors and without supervision.

26. At the aforementioned time and place, and believing that Koch was a qualified professional guidance counselor, Plaintiff confided in Koch that she was emotionally upset and distraught because she had recently been a victim of a sexual assault.

27. Koch took advantage of Plaintiff's upset and vulnerability, and under the pretext of providing emotional support as her guidance counselor, Koch drew Plaintiff into lengthy counseling sessions during school hours and on school premises.

28. Cloaked with the authority of a school guidance counselor and adult, Koch told Plaintiff that he could help her with her anxiety and distress by personally giving her “lessons” in sex, so she could be a better sexual partner in the future and “enjoy it.”

29. Thereafter, on numerous occasions on the premises of Amherst Central High School, and elsewhere, Koch engaged in unpermitted, forcible, and harmful sexual contact with Plaintiff.

30. Koch coerced Plaintiff to acquiesce in his continued sexual misconduct, and to not report him to anyone, by threatening to do harm to her family if she did.

31. In addition to these direct threats, Plaintiff’s relationship to Defendants as a vulnerable child and student, put pressure on Plaintiff not to report Koch’s abuse or his threats.

32. Defendants knew or should have known that Koch was a danger to minors, like Plaintiff, before he sexually abused Plaintiff.

33. Defendants Amherst Central School District and Amherst Central High School knew or should have known that Koch was not qualified to perform the duties of a guidance counselor.

34. Defendants Amherst Central School District and Amherst Central High School knew or should have known that allowing Koch, to have unsupervised and unlimited access with students, particularly vulnerable students like Plaintiff who were in need of emotional support, posed an unacceptable risk of child sex abuse.

35. Prior to the time of Plaintiff’s abuse by Koch, Defendants knew or should have known that there was a specific danger of child sex abuse for children in their institutions and programs.

36. The sexual abuse of Plaintiff by Koch was foreseeable.

37. Defendants Amherst Central School District and Amherst Central High School owed Plaintiff a reasonable duty of care because they affirmatively solicited children and parents to send their children to Amherst Central High School; they undertook custody of minor children, including Plaintiff; they promoted their facilities and programs as being safe for children, they held out their agents, including Koch, as safe to work with and around minor students, they encouraged parents and children to spend time with their agents; and/or authorized their agents, including Koch, to provide professional services to children.

38. Defendants Amherst Central School District and Amherst Central High School owed Plaintiff a heightened, fiduciary duty of care because they held themselves out as being able to provide a safe and secure environment for children, including Plaintiff; Plaintiff's parents entrusted Plaintiff to Defendants' care, and expected that Plaintiff would be safe and properly supervised in an environment free from harm and abuse; Plaintiff was a vulnerable minor, and unable to protect herself; and Defendants affirmatively assumed a position of empowerment over Plaintiff.

39. Defendants owed Plaintiff a duty to protect her from harm because Defendants' acts and omissions created a foreseeable risk of harm to Plaintiff.

40. As a result of the foregoing, Plaintiff has suffered and continues to suffer great physical and mental pain and anguish, severe and permanent emotional distress, psychological injuries, fear and anxiety; was prevented and will continue to be prevented from performing her normal daily activities; was and will continue to be deprived of the enjoyment of life's pleasures; has suffered and will continue to suffer loss of earnings and earning capacity; has incurred and will in the future incur expenses for medical and psychological treatment, and was

otherwise damaged in an amount that exceeds the jurisdictional limits of lower courts in this State.

41. To the extent that any Defendant pleads, or otherwise seeks to rely upon Article 16 of the New York Civil Practice Law and Rules (CPLR) to have fault apportioned to another allegedly culpable party, Plaintiff expressly states that Defendants' conduct falls within one or more of the subdivisions of CPLR 1602.

42. Pursuant to the Child Victims Act, a notice of claim is not a prerequisite to the filing of this action.

**AS TO DEFENDANTS AMHERST CENTRAL SCHOOL DISTRICT AND AMHERST
CENTRAL HIGH SCHOOL**

COUNT I

NEGLIGENT HIRING, RETENTION, SUPERVISION, AND DIRECTION

43. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

44. At all relevant times Defendants Amherst Central School District and Amherst Central High School had a duty to exercise due care in hiring, appointing, assigning, retention, supervision and direction of Koch, so as to protect minor children, including Plaintiff, who were likely to come into contact with him, and/or under his influence or supervision, and to ensure that Koch did not use his assigned position to injure minors by sexual assault, contact or abuse.

45. Defendants Amherst Central School District and Amherst Central High School were negligent and failed to use reasonable care in hiring, appointing, assigning, and retention, of Koch, failed to properly investigate his background and employment history, and/or hired, appointed and/or assigned him to Defendants' high school, when Defendants knew or should

have known of facts that would make him a danger to children; and Defendants were otherwise negligent.

46. Defendants were negligent and did not use reasonable care in their supervision and direction of Koch, failed to monitor his activities, failed to oversee the manner in which he carried out the duties to which Defendants assigned them, even though they knew or should have known that Koch posed a threat of sexual abuse to minors; allowed the misconduct described above to occur and continue; failed to investigate Koch's dangerous activities and remove him from their premises; failed to have policies and practices in place that would have prevented this abuse; and Defendants were otherwise negligent.

47. Koch would not have been in a position to sexually abuse Plaintiff had Defendants Amherst Central School District and Amherst Central High School not been negligent in the hiring, retention, supervision, and direction of Koch

48. At all relevant times, Koch acted in the course and scope of his employment with Defendants.

49. Defendants Amherst Central School District and Amherst Central High School's aforesaid actions were willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

50. As a direct and proximate result of the aforesaid misconduct, Plaintiff suffered grave injury, including physical, psychological and emotional injury as described above.

51. By the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial, together with interest and costs.

COUNT II**NEGLIGENT, RECKLESS, AND WILLFUL MISCONDUCT**

52. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

53. At all relevant times, Defendants Amherst Central School District and Amherst Central High School affirmatively and/or impliedly represented to minor children, their families and the general public that employees and agents working in the Amherst Central School District, including Koch, did not pose a risk of sexually abusing children, and that children, including Plaintiff, would be safe in their care.

54. Defendants Amherst Central School District and Amherst Central High School knew or should have known this representation was false and that employing Koch and giving him unfettered access to children, including Plaintiff, posed an unacceptable risk of harm to children.

55. Defendants Amherst Central School District and Amherst Central High School carelessly, negligently and recklessly failed to have in place an appropriate policy and/or practice for making hiring and assignment decisions, so as to protect vulnerable students in their care from sexual abuse.

56. Defendants Amherst Central School District and Amherst Central High School carelessly, negligently and recklessly failed to have in place an appropriate policy and/or practice to monitor, supervise or oversee Koch's interactions with minor students such as Plaintiff, in order to keep them safe from sexual abuse.

57. The careless, negligent and reckless misconduct by Defendants Amherst Central School District and Amherst Central High School as described herein was done with utter

disregard as to the potential profound injuries which would ensue, and with depraved indifference to the health and well-being of children., As a direct and proximate result of Defendants' misconduct, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

58. By the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial, together with interest and costs.

COUNT III

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

59. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

60. The sexual abuse of Plaintiff was extreme and outrageous conduct, beyond all possible bounds of decency, atrocious and intolerable in a civilized world.

61. Defendants Amherst Central School District's and Amherst Central High School's aforesaid negligent, grossly negligent and reckless misconduct, endangered Plaintiff's safety and caused her to fear for her own safety.

62. Defendants Amherst Central School District and Amherst Central High School knew or disregarded the substantial probability that Koch would cause severe emotional distress to Plaintiff.

63. As a direct and proximate result of Defendants' foregoing misconduct, Plaintiff suffered severe emotional distress including psychological and emotional injury as described above.

64. By the reason of the foregoing, Defendants Amherst Central School District and Amherst Central High School are liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

COUNT IV

PREMISES LIABILITY

65. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

66. At all relevant times, Defendants Amherst Central School District and Amherst Central High School owned, operated, and /or controlled the premises known as Amherst Central High School, including the areas where the sexual abuse of Plaintiff occurred.

67. At all relevant times, Plaintiff was rightfully present at the aforementioned premises.

68. Defendants Amherst Central School District and Amherst Central High School had a duty to see that the premises at which Plaintiff was rightfully present were in a reasonably safe condition for the intended use by students, like Plaintiff, whose presence was reasonably anticipated.

69. Defendants Amherst Central School District and Amherst Central High School willfully, recklessly, and negligently failed to provide a reasonably safe premises that was free from the presence of sexual predators and/or the assault by the occupants of the premises, including Defendant Koch. Defendants Amherst Central School District and Amherst Central High School thereby breached their duty of care of Plaintiff.

70. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

71. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

COUNT V

BREACH OF FIDUCIARY DUTY

72. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

73. At all relevant times, there existed a fiduciary relationship of trust, confidence and reliance between Plaintiff and Defendants Amherst Central School District and Amherst Central High School. The entrustment of Plaintiff to the care and supervision of the Defendants Amherst Central School District and Amherst Central High School while Plaintiff was a vulnerable child, imposed upon these Defendants a fiduciary duty to act in the best interests of Plaintiff.

74. Defendants Amherst Central School District and Amherst Central High School were entrusted with the well-being, care, and safety of Plaintiff, which Defendants had a fiduciary duty to protect.

75. By reason of the foregoing, Defendants Amherst Central School District and Amherst Central High School breached their fiduciary duties to Plaintiff.

76. As a direct and proximate result of Defendants Amherst Central School District's and Amherst Central High School's foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

77. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

COUNT VI

BREACH OF DUTY IN LOCO PARENTIS

78. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

79. At all relevant times, Plaintiff was a vulnerable child entrusted to the care of Defendants Amherst Central School District and Amherst Central High School, and was under the supervision and control of these Defendants, such that these Defendants owed her a duty to act *in loco parentis* and to prevent foreseeable injuries.

80. By reason of the foregoing, Defendants Amherst Central School District and Amherst Central High School breached their duties to act *in loco parentis*.

81. As a direct and proximate result of Defendants Amherst Central School District's and Amherst Central High School's foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

82. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

COUNT VII

BREACH OF STATUTORY DUTIES TO REPORT

83. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

84. Pursuant to N.Y. Soc. Serv. Law §§ 413 and 420, Defendants had a statutory duty to report reasonable suspicion of abuse of children in their care.

85. Defendants breached their statutory duty by failing to report reasonable suspicion of sexual abuse by Koch.

86. As a direct and proximate result of Defendants Amherst Central School District's and Amherst Central High School's foregoing breaches, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

87. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

COUNT VIII

BATTERY

88. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

89. Defendant Koch, with intent to do so, engaged in sexual and unlawful acts with Plaintiff which amounted to a series of harmful and offensive contacts to Plaintiff's person.

90. At all relevant times, Plaintiff was a minor and did not consent to these sexual and unlawful acts.

91. As a direct and proximate result of Defendant Koch's sexual and unlawful acts, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

92. By reason of the foregoing, Defendant is liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

COUNT IX**ASSAULT**

93. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

94. Defendant Koch, with intent to do so, engaged in sexual and unlawful acts with Plaintiff, which created a reasonable apprehension in Plaintiff of immediate harmful or offensive contact to Plaintiff's person.

95. At all relevant times, Plaintiff was a minor and did not consent to these sexual and unlawful acts.

96. As a direct and proximate result of Defendant Koch's sexual and unlawful acts, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

97. By reason of the foregoing, Defendant is liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

COUNT X**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

98. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

99. Defendant Koch engaged in sexual and unlawful acts with Plaintiff with intent to cause, or with reckless disregard for the probability of causing, Plaintiff to suffer severe emotional distress.

100. Defendant Koch's conduct was both extreme and outrageous in character, beyond all possible bounds of decency, atrocious and intolerable in a civilized world.

101. Defendant Koch committed these sexual and unlawful acts maliciously, fraudulently, and oppressively with the wrongful intention of injuring Plaintiff and in disregard to Plaintiff's rights.

102. As a direct and proximate result of Defendant Koch's conduct, Plaintiff suffered severe emotional distress including psychological and emotional injury as described above.

103. By reason of the foregoing, Defendant is liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

WHEREFORE, Plaintiff prays for judgment as follows:

- a. Awarding Plaintiff compensatory damages for her injuries, in an amount to be determined at trial;
- b. Awarding Plaintiff punitive damages for her injuries, in an amount to be determined at trial;
- c. Awarding Plaintiff prejudgment interest, to the extent available by law;
- d. Awarding Plaintiffs costs and disbursements and attorneys' fees to the extent available by law; and
- e. Awarding such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

1. Plaintiff demands a trial by jury of all issues triable by jury in this action.

Dated: September 19, 2019

Yours, etc.

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